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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/807,623
Filing Date: March 24, 2004
Appellant(s): GALLOWAY ET AL.

Silvy Anna Murphy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/29/2009 appealing from the Office action mailed 9/8/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,745,880

Strothmann

4-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims and is the Examiner's ultimate position:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1-23 and 47-64 are rejected under 35 U.S.C. 102(b) as being anticipated by Strothmann (United States Patent No.: 5,745,880).

As per claims 1 and 47:

Strothmann discloses

- receiving identifications of one or more migration tasks for migrating said computer-based application from said source platform to said target platform (see at least col. 2:44-45 “**movement or migration from an existing computer system platform to an alternate computer system platform**” – *migrations are identifications for migrating tasks*);
receiving at least one assessment type selected for estimating a coast for migrating said computer-based application from said source platform to said

target platform (see at least col. 3:45-47 **"A selected time period (TIME2) will be chosen in which to evaluate and compare the platforms"** – *Note: TIME2 is considered as one of the assessment type*), wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type (see at least col. 3:47 **"In a preferred embodiment, a time period of nine (9) years is chosen"** – *Note: selected the TIME2 comprises nine (9) years duration, or nine (9) assessment types*), and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said cost that is greater than said third assessment type (see at least **"TABLE A"** – *Note: As the year increasing, the estimated costs for operating the existing application decreasing. In other words, as the year increases, the estimated costs are more accurate comparing to the previous year. Furthermore, Strothmann illustrates in FIG. 1, the costs for operating an application in three different assessment types (such as "total costs", "cost of generic application", and "personnel, hardware and facility"). The costs for personnel, hardware, and facility (i.e. first assessment type) delineate a degree of accuracy for estimating the cost that are greater than the cost of generic application (i.e. second assessment type). The costs of generic application delineate a degree of accuracy for estimating the cost that are greater than the total costs (i.e. third assessment type). The total yearly costs are the least accuracy costs.*);

- correlating base costs to said one or more migration tasks (see at least **FIG. 1**; see also at least col. 4, line 67 – col. 5:1-2 **“As an example, if the total number of application functions is 1000, and if migration of an application which comprises 10% of the total cost base is being considered, then 100 generic units are being moved...”**);
- receiving identifications of migration attributes that affect said base costs (see at least (see at least col. 2:59-61 **“three broad categories are identified hardware and software costs, plant or facility costs and support or personnel costs”**);
- correlating cost factors to said one or more migration tasks, each of said cost factors indicating an amount by which a migration attribute affects a base cost of a migration task (see **“TABLES A-P”**); and
- estimating said cost for each migration task, by applying said cost factors for said each migration task to said base cost of said migration task (see **“TABLES A-P”**).

As per claims 2 and 52:

Strothmann discloses

- wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products and deployment (see at least col. 2:44-45 **“move or migrating”**; see also col. 8:55-59 **“Data Synchronization”**).

As per claims 3 and 53:

Strothmann discloses

- wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes (see at least col. 2:59-61 **"three broad categories are identified hardware and software costs..."**).

As per claims 4 and 54:

Strothmann discloses

- wherein said source code attributes comprise at least one code metric chosen from a group consisting of number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence (see at least col. 2:45-46 **"for migrating all of the functions on the existing computer platform, for migrating a selected number of functions"**).

As per claims 5 and 49:

Strothmann discloses

- estimating a total cost for said one or more migration task, by summing said cost estimated for said each migration task (see at least col. 5:41-43 **"the total**

projected conversion costs are two hundred fifty thousand dollars (\$250,000)...”); and

- displaying a migration assessment comprising said total cost (see “**TABLE A-P**”).

As per claims 6:

Strothmann discloses

- wherein the migration assessment further comprises said cost estimated for said each migration task (see “**TABLES A-P**”).

As per claims 7 and 50:

Strothmann discloses

- applying tolerances to one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks (see **FIGS. 2A-2C**), wherein one or more of said cost estimated for said each migration task and said total cost estimated for said one or more migration tasks comprises a cost range (see at least “**TABLE D**”).

As per claims 8:

Strothmann discloses

- wherein one or more of said base costs are received from a user (see at least col. 2:54-55 “**The user will estimate or make projections in various categories as input into the system**”).

As per claims 9:

Strothmann discloses

- wherein one or more of said cost factors are received from a user (see at least **"TABLES A-P"**).

As per claims 10:

Strothmenn discloses

- wherein the degree of accuracy for estimating said cost for said migration comprises a degree of accuracy for said cost estimated for said migration task and said total cost estimated for said one or more migration task (see at least **"TABLES A-P"**).

As per claims 11 and 48:

Strothmann discloses

- creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment (see at least **"TABLES A-P"**).

As per claims 12, 51 and 60:

Strothmann discloses

- correlating base time requirements to said one or more migration tasks (see at least **"TABLE O"**);
- correlating time factors to said one or more migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task (see at least **"TABLE O"** and **"TABLE P"**); and
- estimating a time requirement for said each migration task, by applying said time factors for said migration task to said base time requirement for said migration task (see at least **"TABLE O"**, also see **FIGS. 2A-2C**).

As per claims 13 and 56:

Strothmann discloses

- receiving identifications for respective migration tasks for migrating said computer-based application from said source platform to said target platform (see at least col. 2:44-45 **"movement or migration from an existing computer system platform to an alternate computer system platform"** – *migrations are identifications for migrating tasks*);
- receiving at least one assessment type selected for estimating a time requirement for migrating said computer-based application from said source platform to said target platform (see at least col. 3:45-47 **"A selected time period (TIME2) will be chosen in which to evaluate and compare the platforms"** – *Note: TIME2 is considered as one of the assessment type selected for estimating the timing of migration*), wherein said at least one assessment type

received comprises at least one of: a first assessment type, a second assessment type and a third assessment type (see at least “**TABLE O**” – **Note**: *selected the TIME2 comprises at least five (5) estimate years duration, or at least five (5) estimate assessment types. 5 years period is estimated for scheduling the migration process*), and wherein said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type (**Note**: *Time must be determined (i.e. estimated) in order to scheduling the migration process*);

- correlating base time requirements to said respective migration tasks (see at least col. 8, “**TABLE O**”);
- receiving identifications of migration attributes that affect migration time (see at least col. 2:59-61 “**three broad categories are identified hardware and software costs...**”);
- correlating time factors to said respective migration tasks, each time factor indicating an amount by which a migration attribute changes a base time requirement for a migration task (see at least “**TABLES O-P**”); and
- estimating a time requirement for each migration task, by applying said time factors for said migration task to said base time requirement of said migration task (see at least “**TABLE O-P**”, also see **FIGS. 2A-2C**).

As per claims 14 and 61:

Strothmann discloses

- wherein said one or more migration tasks comprise at least one of: system building, project management, ramp up, baseline testing, migration, system testing, delivery, acceptance testing, sign-off, exporting data, importing data, redirecting user terminals, replacing third party products, and deployment (see at least col. 2:44-45 "**move or migrating**", also see at least col. 8:55-59 "**Data Synchronization**").

As per claims 15 and 62:

Strothmann discloses

- wherein said migration attributes comprise at least one of: hardware attributes, operating system attributes, application attributes, environment attributes, source code attributes, complexity attributes and testing attributes (see at least col. 2:59-61 "**three broad categories are identified hardware and software costs...**").

As per claims 16 and 63:

Strothmann discloses

- wherein said source code attributes comprise at least one code metric chosen from a group consisting of: number of code lines, number of code modules, number of files, call types, number of calls, data volume, structural integrity, use of lexical functions and operating system dependence (see at least col. 2:45-46

"for migrating all of the functions on the existing computer platform, for migrating a selected number of functions").

As per claims 17 and 58:

Strothmann discloses

- estimating a total time requirement for said one or more migration tasks, by summing said time requirement estimated for said each migration task (see at least col. 8, **"TABLES A-P"** – *Note: Total of five (5) or nine (9) years for migration*); and
- displaying a migration assessment comprising said total time requirement (see **"TABLES A-P"**).

As per claims 18:

Strothmann discloses

- wherein said migration assessment displayed further comprises said time requirement estimated for said each migration task (see **"TABLES A-P"**).

As per claims 19 and 59:

Strothmann discloses

- applying tolerances to one or more of said time requirement estimated for said each migration task and said total time requirement estimated for said one or more migration tasks, wherein one or more of said time requirements estimated

for said each migration task and said total time requirement estimated for said one or more migration tasks comprises a time range (see at least col. 8, **"TABLE O"** and **"TABLE P"**).

As per claims 20:

Strothmann discloses

- wherein one or more of said base time requirements are received from a user (see at least col. 2:54-55 **"The user will estimate or make projections in various categories as input into the system"**).

As per claims 21:

Strothmann discloses

- wherein one or more of said time factors are received from a user (see **"TABLES A-P"**).

As per claims 22:

Strothmann discloses

- wherein said degree of accuracy for estimating said time requirement for said migration comprises a degree of accuracy for said time requirement estimated for said each migration task and said total time requirement estimated for said one or more migration tasks (see at least col. 8, **"TABLE O" – shows the conversion period for each assessment type**).

As per claims 23 and 57:

Strothmann discloses

- creating an assessment template based on said at least one assessment type selected, said assessment template comprising a format for said migration assessment displayed (see **"TABLES A-P"**).

As per claims 55 and 64:

Strothmann discloses

- wherein said first assessment type delineates a degree of accuracy for generating said time assessment that is greater than said assessment type and wherein said second assessment type delineates a degree of accuracy for generating said time assessment that is greater than said third assessment type (see at least **TABLE C – "The training costs for the initial generic units will generally be higher than training costs for later units."** In other words, the first assessment type is being greater in accuracy than the second assessment type and the second assessment type is being greater in accuracy than the third assessment type and so forth).

(10) Response to Argument

Appellant argues Strothmann fails to teach:

1. "receiving at least one assessment type selected for estimating a cost for migrating said computer based application from said source platform to said

target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type and a third assessment type and wherein said first assessment type delineates a degree of accuracy for estimating said cost that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said costs that is greater than said third assessment type."

2. "receiving at least one assessment type selected for estimating a time requirement for migrating said computer based application from said source platform to said target platform, wherein said at least one assessment type received comprises at least one of: a first assessment type, a second assessment type, and a third assessment type, and wherein said first assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said second assessment type and wherein said second assessment type delineates a degree of accuracy for estimating said time requirement that is greater than said third assessment type."

Examiner respectfully disagrees:

1. Stothmann teaches at least one assessment type is selected for estimating costs for migrating computer based application from the source platform to the target platform (see at least col. 3:45-47 "**A selected time period (TIME2) will be chosen in which to evaluate and compare the platforms**"). The TIME2 is considered as at least one of the assessment types selected for

migration. TIME2 further comprises at least nine (9) years duration or nine (9) assessment types.

Although the claims compare the degree of accuracy between three assessment types however the claims further recite **"comprises at least one of..."** the examiner is required to address only one of the assessment types not all three assessment types. Therefore, Strothmann teaches at least one assessment type that delineates a degree of accuracy for estimating the costs (see at least **"TABLES A-P"**).

In addition, Strothmann teaches in the (TABLES A-P), as the year increases, the costs for operating the application(s) decrease. This also indicates that the costs are more accurate as the year increases. Furthermore, Strothmann illustrates in FIG. 1, three different assessment types (such as "total costs", "cost of generic application", or "personnel, hardware and facility") for operating the application. The "personnel, hardware, and facility" (*i.e. first assessment type*) delineates a degree of accuracy for estimating the costs that are greater than the "cost of generic application" (*i.e. second assessment type*). The "costs of generic application" delineates a degree of accuracy for estimating the costs that are greater than the "total costs" (*i.e. third assessment type*).

2. Strothmann teaches at least one assessment type is selected for estimating time for migrating computer-based application from the source platform to the target platform (see at least col. 3:45-47 **"A selected time period (TIME2) will be chosen in which to evaluate and compare the platforms"**).

The TIME2 is considered as at least one of the assessment types selected for migration. The selected TIME2 comprises at least five (5) estimated years period or five (5) assessment types (see at least **"TABLE O"**). This five (5) years period is estimated for scheduling the migration process.

Although the claims compare the degree of accuracy between the three assessment types however the claims further recite **"comprises at least one of..."** the examiner is required to address only one of the assessment types not all three assessment types. Therefore, Strothmann teaches at least one assessment type that delineates a degree of accuracy for estimating the costs.

In addition, Strothmann teaches in the (TABLES O-P), scheduling the timing for migration. Time must be determined (i.e. estimated) in order to scheduling the migration process.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Phillip H Nguyen, Examiner

/Phillip H Nguyen/

Art Unit: 2191

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